TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 218.

THE STEAMER LUCILLE, THE BALTIMORE AND SOUTHERN TRANSPORTATION COMPANY, CLAIMANT, APPELLANT,

vs.

NANCY RESPASS, JOHN RESPASS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED OCTOBER 11, 1872.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the United States court-house in the city of Baltimore, on the first Monday of April, (being the first day of the same month,) in the year of our Lord one thousand eight hundred and seventy-two—present the honorable Hugh L. Bond, circuit judge; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

STEAMER LUCILLE, APPELLANT,
vs.
NANCY RESPASS & OTHERS.

Be it remembered that heretofore, to wit, on the 31st day of March, in the year of our Lord 1871, the owners and claimants of the steamer Lucille, by their proctor, filed in the circuit court here a record from the district court of the United States, in and for the Maryland district, in the words and of the tenor following, to wit:

Record.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

2 At a district court of the United States, in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday of March, (being the seventh day of the same month,) in the year of our Lord one thousand eight hundred and seventy-one—present the honorable William F. Giles, judge Maryland district; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

Libel.—Filed Sept. 6th, 1869.

NANCY RESPASS, JOHN RESPASS, ARMSTEAD RESpass, James Respass, Georgianna Respass,
vs.
STEAMER LUCILLE.
Libel. In admiralty.

To honorable William Fell Giles, judge of the United States district court for the district of Maryland:

3 The libel of Nancy Respass, of Mathews County, in the State of Virginia, in her own behalf, and as the next friend of her infant children, viz, John, born Sept. 27th, 1860; Armstead, born October 11th, 1862; James, born in 1864; Arthur, born in 1866; and Georgianna, born in 1868, exhibits this her libel in a cause of collision, civil and maritime; and thereupon the said libellant doth allege and propound as follows, to wit:

First. That the said schooner Champion is a vessel of more than twenty tons burthen, to wit, of the burthen of thirty-one tons, or thereabouts, and at the time when the cause of action, hereinafter mentioned and set forth, arose, was enrolled and licensed for the coasting-trade.

Second. That on or about the 19th day of December, A. D. 1868, the aforesaid schooner, being tight, staunch, and well-manned and provided,

sailed from Milford Haven, in the State of Virginia, with a valuable cargo of oysters, on a voyage to the port of Baltimore.

Third. That during said voyage, to wit, about half past one o'clock a. m., on the 20th day of December, 1868, the said schooner being then about five miles from the western shore of the Chesapeake Bay, and a little above Cove Point, with the wind blowing a light breeze from the east-southeast, her sails being well out on the port side, the course of the vessel being north by west, the mate of the schooner being on the look-out, descried lights ahead, and soon after discovered that they were borne by a steamboat approaching the said schooner from a northwardly direction; that the mate reported said vessel to the
4 master who was at the helm, and told him to hold his course, which the said master did; said steamer struck the said schooner, stem on, on her starboard bow, and so greatly injured her that she immediately filled with water, and sank; said steamer proved to be the Lucille, of about 514 tons burthen, bound from Baltimore to Wilmington, North Carolina; that said schooner had the proper lights, and that the said collision was wholly caused by the negligence of the officers of the steamer Lucille.

Fourth. That owing to the rapid sinking of the said schooner Champion, James Respass, husband of the libellant, and father of the said children, was drowned.

Fifth. That the said James Respass was the sole support of the libellant and of the said children, and on him they depended for their daily bread, by the death of whom they have sustained great loss and damage.

Sixth. That the said James Respass was employed on the said schooner in the capacity of cook, and the libellant claims to be damaged to the extent of two thousand dollars, for which they claim reparation in this suit.

Seventh. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steamer Lucille, her boats, tackle, apparel, and furniture; and that this honorable court will pronounce for the
5 libellants' aforesaid demand and decree the same to be paid with costs; and for such other and further relief and redress as to right and justice appertain, and as the court is competent to give in the premises.

JOHN M. FRAZIER,
Proctor for Libellant.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep steamer Lucille, her boats, tackle, apparel, and furniture, to answer the libel of Nancy Respass and others, in a cause of collision, civil and maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the 21st day of September inst.; and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this first Tuesday of June, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued 6th day of September, 1869.

JAMES W. CHEW,
Clerk Dist. Court.

6 *Stipulation.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered that, on this 6th of September, in the year of our Lord one thousand eight hundred and sixty-nine Rob't Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear James D. Leary and Thomas Corner, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of four thousand dollars, for the claimants of the steamer Lucille, unto Nancy Respass and others, to perform and fulfill the final order and decree of the said district court and, in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit in and for the Maryland district, and in case of an appeal from such final order and decree of the said circuit, then the final order and decree of the Supreme Court of the
7 United States, in a certain cause now depending in the said district court, wherein the said Nancy Respass and others are libellants, and the claimants of the said steamer Lucille are respondents, and unless they do so they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattels, land, and tenements, wheresoever found or to be found.

Acknowledged before—

ROB'T LYON ROGERS,
U. S. Commissioner.

Claim.

In the U. S. district court for the district of Maryland.

NANCY RESPASS & OTHERS }
vs. }
STEAMER LUCILLE. }

And now comes Thomas Corner, treasurer of the Southern Transportation Company, and claims the said steamer Lucille as the property of said company; no other person being an owner or part-owner of said steamer than said company.

THOMAS CORNER, *Treasurer.*

Subscribed and sworn to before me this 6th Sept., 1869.

ROB'T LYON ROGERS,
U. S. Commissioner.

8 *Answer.—Filed Oct 25th, 1870.*

To the Hon. W'm Fell Giles, judge of the district court of the United States for the district of Maryland:

The answer of the Baltimore and Southern Transportation Company to the libel filed against the steamer Lucille in this court by Nancy Respass, in her own behalf, and as next friend, respectfully represents—

1st. That the said Baltimore and Southern Transportation Company is the true and lawful owner of the said steamer Lucille, and that no one else is the owner thereof.

2d. That this respondent has no knowledge of schooner Champion, described in said libel, or who were her owners, or how she was employed, except as hereinafter particularly stated.

3rd. That this respondent has no knowledge of the voyage undertaken by said schooner Champion on the nineteenth day of December, eighteen hundred and sixty-eight, except as hereinafter particularly stated.

4th. This respondent has no knowledge of the collision between the schooner Champion and the steamer Lucille, described in said libel, except from the information derived from those present, and from such representations, and not of its own knowledge. It avers that it does not believe that the facts in the said libel contained, purporting to describe said collision, are true; but it avers the truth in its
9 behalf to be: That on the night of the 19th Dec., 1868, the said steamer Lucille, under the command of Captain Harrington, being well manned and equipped, with a moderate cargo on board, started from the port of Baltimore on a voyage to Wilmington, N. C. That about 1 o'clock of the morning of the 20th December, 1868, just above the mouth of the Patuxent River, in the Chesapeake Bay, she discovered the sch'r Champion on her port-bow, considerably to the eastward of said steamer, proceeding up the bay, loaded. That the Lucille was proceeding south by east one-half east, and the schooner was proceeding in an opposite direction, in a line parallel with the said steamer, having the wind free, and under mainsail, foresail, and jib. That had both vessels continued their course no collision could possibly have occurred, and the vessels would have passed each other a considerable distance apart; but that without any danger prompting, and from pure negligence and want of care, the said schooner, when she was nearly opposite said steamer, changed her course to the westward, and came directly on the said steamer; and that as soon as this change of course occurred orders were given on board the Lucille to stop and back, and to port the wheel. That these orders were instantly obeyed, but that it was impossible by any precaution on part of the said steamer after said schooner so changed her course to avoid a collision. That the said schooner Champion, still advancing, struck the bow of the steamer on her port side with the starboard of said schooner, and in a few minutes after said collision the said schooner sank.
10 That said steamer had the proper lights required by law, and they were trimmed and burning. That she had a lookout stationed in her bow, the most advantageous position for that object, and the said lookout was in the faithful discharge of his duty.

5th. That as this respondent is informed and believes the collision was caused by the negligence and improper conduct of the Champion, and not as alleged in said libel; that every effort was made that could have been made by the Lucille to avoid said collision; and that the entire cause of the same was the conduct of those on the Champion.

6th. This respondent has no knowledge of the libellant, does not know whether she is the widow of James Respass, or whether the children named are the children of said Respass, or whether, in fact, James Respass was drowned by the sinking of the said Champion; but if he were so drowned, this respondent has been informed and believes, and therefore alleges, that he was drowned by his own neglect and want of care: that after the said collision took place, the said James Respass could easily have gotten on board the steamer Lucille and saved his

life; that the schooner and steamer were alongside of each other, as this respondent has been informed, for about an half an hour before the sinking of the schooner, and those on board the Champion were frequently warned to get on board the Lucille, and if the said James Respass was drowned, it was because of his wilful neglect of said warning and of the abundant means for his escape.

11 7th. This respondent further alleges and propounds by way of defense to the libel filed in this cause that it has been advised that this court has no jurisdiction over the matters and things contained in said libel; that the same are not of admiralty jurisdiction; and that if the same are of admiralty jurisdiction the said Nancy Respass has no right to file a libel for the relief asked for in this cause, and that such relief ought to have been asked in the name of the State of Maryland.

8th. This respondent is advised that if the libellant has any relief in this cause it would be not in rem but in personam.

9th. That all and singular the premises are true.

Wherefore this respondent prays that the said libel may be dismissed with costs.

WM S. WATERS,
Proctor for Respondents.

Deposition of John B. Powell.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Robert Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the

12 eighth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me John B. Powell, a witness for the libellant in a certain civil cause depending in the district court of the United States, in and for the district of Maryland, wherein Nancy Respass and others are libellants, and the claimants of steamer Lucille are respondents.

And the said JOHN B. POWELL, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I know Nancy Respass, a libellant in this case, and I know also the steamer Lucille. Nancy Respass is a colored woman, and the wife of James Respass, a colored man, who was a passenger on board the schooner Champion, and was drowned on the occasion of the collision of the steamer Lucille with the schooner Champion in the Chesapeake Bay, on or about the 20th of December, A. D. 1868. The collision caused the death of James Respass most certainly, for the steamer cut the vessel in two forward, by colliding with her, causing the schooner to sink in some fifteen minutes, and thus drowning Respass.

James Respass was an industrious, hard-working, and sober man, and his family was dependent on his exertions for their support. I

13 know that James Respass and Nancy were man and wife. They lived together as man and wife, and I believe they were ge'rally reputed to be man and wife. They have four children. James Respass

followed oystering for living. My business is that of oystering. James Respass could make at his business as oystering about five or six hundred dollars a year.

Being cross-examined by the proctor for the respondents, the witness deposes and says as follows:

Ques. How do you know that James Respass and Nancy Respass were husband and wife?

Ans. Because they lived together and she had children by him. I know of no other reason. I have known them to live together about six or seven years. I suppose James Respass was about thirty years old.

his
JOHN B. + POWELL.
mark.

Subscribed and sworn to before me this 8th day of November, 1869.
ROB'T LYON ROGERS,
U. S. Commissioner.

Deposition of Wm S. Harrington, taken before Isaac Brooks, jr, U. S. commissioner, October 18th, 1870.

And the said WILLIAM S. HARRINGTON, being by me first carefully examined and cautioned, and duly sworn according to law to testify
14 the whole truth, and being examined on behalf of the respondent, makes oath, deposeth, and saith as follows, to wit:

I reside in Baltimore. I am a mariner. I was in command of the steamer Lucille in February, 1867, and remained in command of her until March, 1870. She was engaged in running from Baltimore to Wilmington, N. C., while I was on her. She was a steam-propeller, five hundred and fourteen tons burthen. I recollect the trip of the steamer Lucille from Baltimore to Wilmington when the collision occurred between the steamer and the schooner Champion. It was in December, 1868. We were on our trip down the Chesapeake Bay. We had a fair but not a full cargo on board. I had a first and second officer and four seamen on deck, and a chief and assistant engineer, one oiler, three firemen, and two coal-passers, a cook and steward. The collision took place between Cove Point and James Point, about four or five miles north of the Patuxent River. It was in the middle of the bay. Between one and two o'clock the first officer came to my room and called me up and asked me to relieve him, as he felt very unwell. I immediately got up and went into the pilot-house. He reported to me a vessel with a red light coming up. I saw her and I told him I would look out for her, that he could go below. I kept an eye upon the vessel; she was coming up all right, when suddenly my lookout said that the vessel had changed her course, or was running into us, or something to that
15 effect. I cannot state the exact words. I saw then that she had changed her course by seeing both of her lights. She was running directly for us. I gave orders to the man at the wheel to put his wheel hard aport, and I rang the bell to stop and back the steamer, which was immediately done. The schooner was then close to us, making a circle, coming around all the time, and she struck us just forward of our fire-chains. I asked the captain of the schooner if he was hurt any she was then laying alongside of us. He said that he was sinking. I told him to lower his sails, and I would come alongside again. In the

meantime, while we were talking, we had drifted apart. I got alongside as soon as I could, and my first officer jumped on board of him, and made her fast alongside, and took a lamp and went aft and looked in the cabin, and then came forward, looking all around the deck while he was there. I requested the men to come on board the steamer if she was sinking; finding they did not come I jumped on board the schooner myself, and again asked them to get on board the steamer. Two of them did get on board the steamer then, the others remained on the schooner. I then started forward to look for the leak. When the schooner went down with us I found myself overboard and swam to an object which proved to be a boat, and I was afterwards picked up by a boat's crew, and was taken on board the steamer. After getting dry clothes on, I came on deck and had some conversation with the
16 captain of the schooner. He told me that he had put his helm hard up. We proceeded then down the bay and put them off at Fortress Monroe.

Mr. Lee, the first officer, was drowned. The steamer's lights on the night of the collision were in good condition and burning. We had a white mast-head light, and a red and green side lights, placed in their proper positions. The collision took place a quarter to a half an hour after I came on deck. We were sailing south half east, the proper course to take in going down the bay. When I came on deck, the schooner was a long way off. She on our port bow; that is, she was to the eastward and south'ard. I kept a lookout on her until the collision occurred. I can't say that I kept my eye constantly on her; before I saw that she had changed her course, she was running on a parallel line eastward of my course, a quarter of a mile at least, it might have been more. When I saw that she had changed her course, she was coming right for our fore-rigging, that is, about forty feet from the stern of the vessel, or nearly abeam of us. She then seemed to be coming directly across the bay, and, in fact, was so coming. When I first saw that she had changed her course, she was fifty to a hundred yards off. I could see the vessel herself, which I could not do before. She was coming fast, the wind was blowing fresh from south'ard and eastward. I noticed the wind particularly; it was blowing fresh and was cloudy. I went from the pilot-house to the side of the steamer
17 where the schooner struck, and had good observation, and saw the schooner strike the steamer. She struck the steamer on her port-bow a glancing blow, with the starboard-bow of the schooner, just forward of the fore-chains, about twenty-five feet abaft the stem of the steamer. The schooner dropped alongside, with her head towards the head of the steamer. It was then that the first conversation took place between the captain and me.

There was plenty of chance for any one on board the schooner to have gone on board the steamer. As near as I can judge, there was a half an hour that we were alongside of each other. I never saw anything but the port light of the schooner until she changed her course.

Cross-examined:

The Lucille is a propeller. Her speed is about eight knots an hour. Before I rang the bell to stop her, she was making her usual speed. The night was cloudy; but could see lights very well. When I spoke to the men they were on the deck of the schooner. The green light was on the starboard side on top of the pilot-house; the red light was on the port side. I do not recollect when the lights were trimmed; they were burning brightly. I saw them myself. They were not trimmed while

I was on deck. It was the business of the wheelsman to trim the lights. My first officer and the man at the wheel were in the pilot-house when I first came on deck. I cannot tell what course the schooner was *was* running when I first saw her. I judge she was running a course opposite to ours, from the appearance of her lights.

18 Redirect:

Edward Conway was on the lookout the night of the collision. He was a competent man for that post.

Re-cross:

The lookout was stationed right forward on the forward deck. He had been there, I judge, from twelve o'clock. The collision took place between one and two o'clock.

(Signed) WILLIAM J. HARRINGTON.

Sworn to before me this 18th day of October, A. D. 1870.
ISAAC BROOKS, J'R,
U. S. Commissioner.

Deposition of Rob't A. Courtney, taken before Issac Brooks, jr, U. S. commissioner, November 2nd, 1870.

And the said ROBERT A. COURTNEY, being by me first carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and being examined on behalf of the respondent, makes oath, deposeth, and saith as follows, to wit:

My name is Robert A. Courtney. I have been a seafaring man for the last fourteen years, and have been steamboating for the last ten years. I knew the steamer Lucille. I was on her about
19 27 months. I was two years mate of her. I was second mate of her in the month of December, 1869, when the collision occurred between her and the Champion. I was present on board of her in my room asleep at the time of the collision. I came on deck after the collision. When I came on deck the Champion had not sunk, and did not sink for a half to three-quarters of an hour afterwards. The captain and one man came on board the Lucille from the Champion after the collision, before the schooner sunk. After the captain of the Champion came on board, I asked him if he did not put his helm up. He said that he did put it up. I don't recollect anything else that he said. The wind being southeast, if he did put his helm up, the effect of this would have been to have brought the schooner in contact with the steamer. Putting the helm up means putting it to the windward.

Cross examined:

When the steamer was struck, from what I could learn—I was not on deck myself, and, therefore, do not know—the course the steamer was heading was west-southwest. I can't tell what way the sch'r was heading. It is impossible for me to say. The wind was about southeast.

Redirect:

My testimony in regard to putting the helm up, and the effect of it, was given upon the supposition that the wind was as I have stated
20 it, and the two vessels running opposite courses, one up and the other down the bay, and the steamer going down on the west side and the schooner coming up.

Cross-examined:

It is all supposition with respect to the courses, as I was in bed and knew nothing about them.

(Signed) R. A. COURTNEY.

Sworn to before me this 2d day of November, 1870.

ISAAC BROOKS, JR.,
Commissioner.

Decree.—Filed March 7th, 1871.

In the district court of the U. States for Maryland.

NANCY RESPASS ET ALS.
vs.
STEAMER LUCILLE.

This cause came on to be heard, and was argued by counsel for the respective parties, and the proceedings were read and considered; and it appearing to the court that the libellants have sustained damage to the amount of two thousand one hundred dollars, it is thereupon, by this honorable court, ordered, adjudged, and decreed that James D. Leary and Thomas Corner, the stipulators in this cause, do, within ten days from this eighth day of March, A. D. eighteen hundred and
21 seventy-one, pay to the libellants the sum of two thousand one hundred dollars, with their costs of suit, to be taxed by the clerk of this court. And it is further ordered, adjudged, and decreed that the said sum of two thousand one hundred dollars bear interest from this date.

WILLIAM F. GILES.

Remittetur.—Filed March 8th, 1871.

In the district court of United States.

NANCY RESPASS & ALS.
vs.
STEAMER LUCILLE.

The decree in this cause having, on the application of the respondent, and against the objection of the libellants, been entered for two thousand one hundred dollars, an amount larger than that claimed in the libel, the libellants hereby remit one hundred dollars, parcel of the said sum.

W. S. BRYAN,
Proctor for Libellants.

From which said decree so as aforesaid passed the said claimants of the said steamer Lucille, by their proctor in open court here, have prayed an appeal to the next term of the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next, and to them it is granted.

22 And also the said libellants, by their proctor, in open court here, have prayed an appeal to the said circuit court of the United

States, to be held at the city of Baltimore on the first Monday in April next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same is transmitted accordingly.

Agreement.—Filed March 8th, 1871.

In the district court of U. States.

NANCY RESPASS & ALS.
vs.
STEAMER LUCILLE.

It is agreed in this case that the appeals by the respective parties may be taken without a bond, and the same is hereby waived.

W. S. BRIAN,
For Libellants.
W'M S. WATERS,
For Resp't.

In testimony that the aforegoing is truly taken from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of the said district court this 31st day of March, in the year of our Lord one thousand *and* eight hundred and seventy-one.

[SEAL'S PLACE.]

JAMES W. CHEW,
Clerk District Court.

23 And afterwards, to wit, on the 27th day of May, in the year of our Lord 1872, the circuit court here made and passed the following decree, to wit:

Decree.

In the circuit court of the United States for the 4th circuit and district of Maryland.

STEAMER LUCILLE
vs.
NANCY RESPASS AND OTHERS,
and
NANCY RESPASS AND OTHERS
vs.
STEAMER LUCILLE.
} Cross-appeals.

This cause having been heard, and the proceedings and arguments of counsel having been fully considered,

It is, this 27th day of May, A. D. 1872, adjudged and ordered that the decree of the district court be, and the same is hereby, affirmed, with costs.

HUGH L. BOND, *Judge*, &c.

From which said decree the said owners and claimants of the steamer Lucille, and the stipulators, by their proctors, in open court here, prayed an appeal to the Supreme Court of the United States to be held

24 at the city of Washington on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating thereto, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

Appeal bond.—Filed May 29th, 1872.

Know all men by these presents that we, Daniel J. Foley and George W. Corner, of the city of Baltimore, are held and firmly bound unto Nancy Respass, of Mathews County, in the State of Virginia, in her own behalf, and as the next friend of her infant children John Respass, Armistead Respass, James Respass, Arthur Respass, and Georgiana Respass, in the full and just sum of four thousand two hundred dollars, to be paid to the said Nancy Respass in her own behalf and as next friend of her said infant children, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the
25 city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and seventy-two, in a suit depending in said circuit court between the claimants of the steamer Lucille, appellants, and Nancy Respass, in her own behalf, and as next friend of her said infant children, appellees, decree was rendered against the said claimants of the steamer Lucille; and the said claimants of the steamer Lucille having obtained an appeal to the Supreme Court, to be holden at Washington on first Monday in December next, to reverse said decree:

Now, the condition of the above obligation is such, that if the said claimant' of the steamer Lucille shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

D. J. FOLEY. [SEAL.]
GEO. W. CORNER. [SEAL.]
[SEAL.]

Sealed and delivered in presence of—
JOHN H. LOWE.

26 In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I have hereunto subscribed my name and affixed the said circuit court this 18th day of September, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 218. The Steamer Lucille—the Baltimore and Southern Transportation Company, claimant—appellant, vs. Nancy Respass, John Respass, et al. Maryland C. C. U. S. Filed 11th October, 1872.

States, to be held at the city of Baltimore on the first Monday in April next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same is transmitted accordingly.

Agreement.—Filed March 8th, 1871.

In the district court of U. States.

NANCY RESPASS & ALS.
vs.
STEAMER LUCILLE.

It is agreed in this case that the appeals by the respective parties may be taken without a bond, and the same is hereby waived.

W. S. BRIAN,
For Libellants.
W'M S. WATERS,
For Resp't.

In testimony that the aforegoing is truly taken from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of the said district court this 31st day of March, in the year of our Lord one thousand *and* eight hundred and seventy-one.

[SEAL'S PLACE.]

JAMES W. CHEW,
Clerk District Court.

23 And afterwards, to wit, on the 27th day of May, in the year of our Lord 1872, the circuit court here made and passed the following decree, to wit:

Decree.

In the circuit court of the United States for the 4th circuit and district of Maryland.

STEAMER LUCILLE
vs.
NANCY RESPASS AND OTHERS,
and
NANCY RESPASS AND OTHERS
vs.
STEAMER LUCILLE.
} Cross-appeals.

This cause having been heard, and the proceedings and arguments of counsel having been fully considered,

It is, this 27th day of May, A. D. 1872, adjudged and ordered that the decree of the district court be, and the same is hereby, affirmed, with costs.

HUGH L. BOND, *Judge, &c.*

From which said decree the said owners and claimants of the steamer Lucille, and the stipulators, by their proctors, in open court here, prayed an appeal to the Supreme Court of the United States to be held

24 at the city of Washington on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating thereto, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

Appeal bond.—Filed May 29th, 1872.

Know all men by these presents that we, Daniel J. Foley and George W. Corner, of the city of Baltimore, are held and firmly bound unto Nancy Respass, of Mathews County, in the State of Virginia, in her own behalf, and as the next friend of her infant children John Respass, Armistead Respass, James Respass, Arthur Respass, and Georgiana Respass, in the full and just sum of four thousand two hundred dollars, to be paid to the said Nancy Respass in her own behalf and as next friend of her said infant children, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the
25 city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and seventy-two, in a suit depending in said circuit court between the claimants of the steamer Lucille, appellants, and Nancy Respass, in her own behalf, and as next friend of her said infant children, appellees, decree was rendered against the said claimants of the steamer Lucille; and the said claimants of the steamer Lucille having obtained an appeal to the Supreme Court, to be holden at Washington on first Monday in December next, to reverse said decree:

Now, the condition of the above obligation is such, that if the said claimant' of the steamer Lucille shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

D. J. FOLEY. [SEAL.]
GEO. W. CORNER. [SEAL.]
[SEAL.]

Sealed and delivered in presence of—
JOHN H. LOWE.

26 In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I have hereunto subscribed my name and affixed the said circuit court this 18th day of September, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.]

JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 218. The Steamer Lucille—the Baltimore and Southern Transportation Company, claimant—appellant, vs. Nancy Respass, John Respass, et al. Maryland C. C. U. S. Filed 11th October, 1872.

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 218.

THE STEAMER LUCILLE, THE BALTIMORE AND SOUTHERN TRANSPORTATION COMPANY, APPELLANTS,

vs.

NANCY RESPASS, J. RESPASS, ET AL.

AGREEMENT OF COUNSEL AND ADDITION TO RECORD.

FILED NOVEMBER 15, 1873.

1 In the Supreme Court of the United States.

STEAMER LUCILLE
vs.
NANCY RESPASS & OTHERS.

It is agreed by the counsel in this cause that the record shall be amended by inserting therein the following depositions, which were read in the circuit court on behalf of the appellant, to wit, those of George Burrill, Edward Conway; and also the following, which were read in the circuit court on behalf of the appellee, to wit, those of John B. Powell, taken Nov. 6th, 1869, Noah T. Sterling, John B. Powell, taken Nov. 8th, 1869, William H. Hudgins, Lucretia Dixon.

Copies of the said depositions are hereto attached.

Nov, 12th, 1873.

R. STOCKETT MATHEWS,
For Appellants.
W. S. BRYAN, *For Appellees.*

2 TESTIMONY FOR APPELLANTS.

Deposition of George Burrill, taken and sworn to before John S. Hanan, comm'r, Feb. 27th, 1869, in Baltimore.

I am a seaman, engaged in fishing in North Carolina at this time. I have been going to sea for eleven years. I was on board the steamer Lucille on the 19th & 20th of December, 1868, when the collision occurred between said steamer & the schooner Champion. I was a seaman on board the Lucille at that time. The steamer Lucille left Baltimore on Saturday, the 19th of December, about 5 o'clock p. m., bound for Wilmington, North Carolina.

The Lucille is a steam sea-going ship, and has a capacity of about 500 tons, I believe.

The Lucille on her trip down had two side-lights & a mast-head light. The starboard light was green, the port light was red, and the mast-head light was a white light, globe-lamp, giving light in every direction. I noticed the lights before & at the time of the collision; they were burning well and gave good lights. Nothing occurred on the
3 voyage down until about 2 o'clock Sunday morning, the 20th inst. About ten minutes before two the man in the lookout reported a light on the port bow. The officer, Mr. Lee, said "All's well; he had seen it." Mr. Lee went immediately to the captain's room and called him. Mr. Lee then returned to his post and waited 'till the captain came. The captain came in the pilot-house, and the man on the lookout reported her again. She was then about two points forward the beam. The captain looked out of the pilot-house & said she was clear of us, all well. About two minutes afterwards the man on the lookout asked the captain if he saw that vessel & what she was doing. And the captain said "My God, what is he doing," and rang the bell to stop the steamer, & back her, & ordered me to put the wheel to port. The schooner then struck us on our port bow with her starboard bow, about one minute and a half afterwards. She then dropped astern gradually, her head being almost to the wind. The captain went out and asked what damage was done, and the reply was, she was sinking, and wanted us to come alongside. The captain of the steamer told the cap-
4 tain of the schooner to lower his sails and he would come along-

side, and ordered one of the boats to be lowered. We went alongside of the schooner and made a line fast to her, and the captain and Mr. Lee went on board of her. The schooner sunk in about an hour after the collision. I was at the helm from 12 o'clock till the time of the collision, and was there when the light was first seen, & at the time of the collision. We were steering south by east half east when the light was first seen. I steered that course until I was ordered to put the helm a-port. When I first saw the schooner I saw her port light only, & she was about a point and a half on our port bow. When I first saw her light I suppose she was about a mile off. I judge she was steering the opposite course from us. If she had kept that course she would have passed us, & five ships between us could have passed. When I saw her coming towards us she had changed her course. At that time when I saw her I had to look just forward of our beam, that is to say, about in an east southeast direction. The schooner had mainsail,
5 foresail, and jib up. I don't know whether she had any more sail up. The wind was to the southward & eastward, about southeast. The Champion was bound up the bay. It was a moderate breeze blowing. We could see a light of that description about a mile and a half. The night was neither light nor dark. At the time I saw her coming towards us a collision could not have been avoided, if we had not stopped her and put the helm a-port the schooner would have struck us abaft the beam and square on. The steamer had no headway at the time of the collision.

Cross-examined:

After the collision the red light was taken down to enable the captain to examine the leak on the schooner. We were ordered to clear away the boats to see if we couldn't save lives. I went out the pilot-house door, & as you go out the reflection of the lights strikes you right in the face. That is the way I observed they were burning. Mr. Lee's watch was the same as mine. The second officer takes the captain's watch usually. The second officer's watch for the captain com-
6 menced at 4 o'clock. The reason that Mr. Lee called the captain, I presume, was according to sickness. I can't say confidently that Mr. Lee was sick; he did not tell me so. At the time of the collision the captain was in the pilot-house. He had been there about half an hour. When the captain first came in the pilot-house the schooner Champion was distant from us about ¾ of a mile forward of the beam. Mr. Lee did not remain in the pilot-house after the captain came. I don't know where Mr. Lee went. When the captain rang the bell to stop the steamer, & ordered me to port the help, the schooner was about 30 yards from us. I saw the schooner's sails distinctly when she was 300 yards from us. The stem of the schooner did not strike us; it was the side of her bow. It was a glancing blow. Previous to the captain's ordering us to stop, we were going at the rate of about 6 or 7 miles per hour. I did not see any vessels on the bay that night but the Champion. I know that the schooner changed her course, because when I first saw her she was sailing up the bay, and just before she ran into us she was sailing across the bay. I could tell she
7 was coming across the bay by the way she was laying. The schooner after she had changed her course must have been steering in a westerly direction. When I first saw the schooner she was not boomed out. She had the wind on her quarter; the sails were on her port side. I can give no other evidence or reason for saying that the schooner had changed her course except what I have already given.

(Signed) G. BURRILL.

Deposition of Edward Conway, taken and sworn to before John S. Hanan, comm'r, Feb. 12th, 1869, at Baltimore.

I am a seaman on board of the steamer Lucille. Have been so engaged for four months. I have been a sailor for 10 or 11 years. I was on board the steamer Lucille on the 19th & 20th of December, 1868, when a collision occurred between the steamer and the schooner Champion. The steamer Lucille is a sea-going vessel. We left Baltimore on the night of the 19th of December, bound for Wilmington, North Carolina. She had a tolerable cargo, but not fully loaded. Capt. Harrington was her captain. Mr. Lee was mate. Mr. Courtenay was 2d officer. I don't know the names of the seamen; there were three
8 in all besides myself. It was cold night, cloudy, & snowing a little occasionally. It was a night when the moon was up, but it was cloudy; the moon could not be seen. There was nothing occurred worthy of notice till we got 4 miles above Patuxent River in the Chesapeake Bay. I was on the lookout. I saw the schooner's red light—the port light. I reported the light to Mr. Lee, the 1st officer, who was on duty. The schooner was well to the eastward of us. When I saw her the second time she was coming right for us. I reported her again, and the steamer was stopped. The schooner struck our port bow with her starboard bow. The schooner then dropped astern of us about 50 yards. Capt. Harrington hailed the schooner to know if she was damaged, and the reply was that she was sinking, & to come alongside. I was right forward in the bow of the steamer, stationed as a look-out. When I first saw the schooner's lights she was two miles, probably further, off. I do not know the course we were running. I was not at the wheel. The wind blew from the southward & eastward. It was a moder-
9 ate, good, whole-sail breeze. The schooner was when I first saw her to the southward & eastward of us; but I can't say how far to the eastward. If the vessel & the steamer had continued the same course they were going when I first saw the schooner, there could have been no collision. I did not keep my eye on her. I reported her to Mr. Lee, in charge of the vessel. I saw her once or twice before I saw her coming towards, after I first saw her. At these times I saw only her port light. When I saw her coming right for us she was only about 150 yards distant. I could see her hull and both lights. She struck us about 8 or 10 feet forward of the fore chains, & about the same distance from our prow. We got alongside as soon as possible. Capt. Harrington & Mr. Lee went on board of the schooner to see if they could render her any assistance in stopping her leak. While they were on board the schooner broke her hawser that was fastened to the steamer, and fell astern again about 200 yards, and then sunk. We then lowered one of our boats & went to the place where she sank. We found Capt. Harrington in the schooner's yawl-boat. It carried
10 him on the steamer. He had been overboard, & it was very cold. We then went out the second time, & staid out three quarters of an hour looking for the other men, but could not find them. Mr. Lee & two men on board the schooner were lost. I think one of the schooner's men was a colored man. The capt. of the schooner & one of his men were on board the steamer at the time the schooner sunk. We could not see the hull of a vessel that night more than 200 yards off. We could see her lights two or three miles off. I couldn't tell what direction she bore when I reported her the second time, but she was coming right for us. She was bearing for our port bow, and coming directly toward us. She bore easterly from us. I saw both lights at

the time she struck us. I did see both the lights of the schooner from the second time I reported her until she struck us. The schooner was sailing at a rapid rate when she struck us. She struck with the side of her bow. I had no other duty at that time but to look out for vessels. When I reported the vessel I was about 6 or 8 feet from the stem of the steamer. I had been there nearly two hours. I had not left
11 that position for a moment during the two hours. The Lucille is a propeller. I suppose a propeller going at the rate of 7 or 8 miles an hour could be stopped perfectly still while a sailing vessel with a good whole-sail breeze, free wind, could run 150 yards. I should judge that the Lucille was not making any head from the time she was stopped. When the schooner struck us she was heading across the bay, her head toward the southwest. She struck us, making less than a right angle with our boat, our boat heading down the bay. The schooner had on mainsail, jib, & foresail, without reef in them, when she struck us. I did not notice whether she had other sails. I do not know which way the tide was running. The schooner swung right astern of us as soon as the collision occurred. Our boat was not going any at the time of the collision.

Cross-examined:

Just previous to the collision there was on the deck of the steamer, Mr. Lee in the pilot-house, the man at the wheel, and myself, as
12 far as I know. I suppose we were going down the bay at the rate of 7 or 8 miles an hour. The second time I saw the schooner's light I could not tell how far she was off. I think I saw her once or twice after this, but could not tell how far she was off until I reported. The steamer was stopped as soon as possible after I reported the schooner the second time. The officer in charge of the vessel heard me when I first reported the schooner. I heard no order given for the vessel to stop; I heard bells ring. The bells were rung immediately after I reported the second time.

(Signed) EDWARD CONWAY.

TESTIMÓNY FOR APPELLEE.

Deposition of John B. Powell, taken & sworn to November 6th 1869 before R. Lyon Rogers, commissioner, at Baltimore.

I am thirty years of age; reside in Matthews County, Virginia, and my occupation for the past eighteen years has been that of a sailor, and I have been in command of vessels. I have been a sailor principally during this time on the Chesapeake Bay and its tributaries. In
13 December, A. D. 1868, I was mate on the schooner Champion, which hailed from Yorktown, Virginia. The schooner Champion left Piankatank River, Milford Haven, somewhere about the 18th or 19th of December, A. D. 1868, freighted with a cargo of between nine hundred and one thousand bushels of oysters, bound to the port of Baltimore. When we left on the voyage Noah T. Stirling was master; I was mate, and Walter Hudgins and James Respass were on board. James Respass was a colored man and a passenger. We left Milford Haven Saturday morning early; about six o'clock, I think. We got into the bay somewhere between twelve and one o'clock, I should think. It was moderate weather when we reached the bay, and towards night we caught a little breeze from the east, and after awhile it changed to about east southeast. We kept on up the bay, steering north by west. I

don't know exactly when we saw the steamer Lucille, but I should think it was about twelve o'clock midnight or one o'clock Sunday morning.

14 We were then heading north by west. When we first saw the steamer I should judge she was about a half a mile off. We saw her starboard light, a green light. We had a red light in the rigging on the port side, and green light in the rigging on the starboard side. The lights were elevated from the deck from eight to ten feet. The steamer bore from us, when we first saw her, about northwest. I was forward on the lookout, forward of the foremast. I had been on the lookout about two hours and a half, and perhaps longer. I cannot state the exact time. I was about six or seven feet from the stem of the schooner. When I saw the steamer I reported it to the captain and told him to hold his course. The captain was at the helm, and had been there during the time I had been on the lookout. The captain held his course, I believe. I don't think he altered it any. The sails of the schooner were on the port side and had been there all night. The Lucille struck us with her stem on our starboard bow, just aft of the 'nighthead and forward of the fore-chains. When she struck us it slewed our bow round and caused our mainsail to jibe over, and our main

15 boom struck her boat's davits and ripped one of the davits off and kept on to his chain-plates, breaking off the boom and leaving a piece in there, which was there the next morning and had to be cut out. I am positive that our sails were on the port side when we first saw the steamer, and also when the collision took place. The schooner was burst open forward, and sunk in about fifteen minutes, and three men were drowned, Walter Hudgins and James Respass on the schooner, and the mate of the steamer. I have no other duty to perform than that of lookout while I was forward, as I have stated. If the schooner had changed her course as far around as west her sails would have jibed and gone over to starboard. The steamer, when she struck us, I should judge, was heading about southwest.

Re-examined:

We had hardly any wind at the time of the collision. We were making from two to three miles an hour. I can say positively that the course of the Champion was not changed after we saw the steamer.

Cross-examined:

If the course of the Champion had been changed I could have

16 told it by her sails. Before I could have told it by the sail the course would have to have been changed a half a point, about. I recollect looking at the sail to see if the course was changed. I was forward, and if the course had been altered any the jib would have swung in if he had kept off; and if he had luffed it would have swung off.

Re-examined:

The best position for a lookout to be was forward of the foremast.

his
JOHN B. + POWELL.
mark.

Deposition of Noah T. Sterling, taken & sworn to before Isaac Brooks, jr., comm'r, November 14th, 1869, at Baltimore.

My name is Noah T. Sterling. I am in my twentieth year, and I reside in Mathews County, in the State of Virginia. My occupation is

that of following the water, and I have been so engaged for the last three years. A part of the time I was master of a vessel. Last December I was master of the schooner Champion, and had been so a month or two, perhaps more. I left as master of the Champion, from Milford Haven, on the Piankatank River, about ten o'clock in the morn-
17 ing of Saturday, in December A. D. 1868; the precise date I do not remember, but it was the day before the collision of the Champion and the steamship Lucille. The morning I left the wind was about north. I beat out the river all that day and got into the bay about eleven or twelve o'clock in the day, and was there becalmed until about sunset. The wind then sprung up about east, and blew a pretty stiff breeze until about one o'clock the following morning. Then the wind began to die out, and so continued until the collision with the steamer Lucille, when I had scarcely sufficient wind to fill the sails, and the wind was east southeast at the time of the collision. When I first saw the steamer, to the best of my belief, she was about half a mile off. She was bearing about N. northwest one half west from us. When we first saw her we were steering north by west, and had been on this course about four hours. We did not change our course, but steered the same. The sails were bearing on the port side of the schooner and had been there from about six o'clock in the evening until this time. They were on the port side when the collision took place. No
18 sail from the *from the* hour of six o'clock till the collision had been on the starboard side. If the course of the Champion had been changed, so that she headed west, her sails would have shifted to the starboard side. I was at the helm of the vessel at the time of the collision, and had been at the helm about one hour previous thereto. We had a lookout stationed at the time, whose name was John Powell. He was about thirty-five years of age, and had been following the water pretty much all his life, and has been in charge of vessels himself often. He was standing forward of the foremast at the time of the collision, and had been there an hour, I reckon. I saw some lights at this time on our starboard side, and I think there were some astern. We had a green and red light up in the forward rigging, a little over eight feet above the deck. The green light was on the starboard side, & the red on the port side. Our crew consisted of three men, and there was a passenger on board. The passenger and our cook, Hudgins, were drowned at the time of the collision. My vessel was loaded with oys-
ters, and we were bound for Baltimore. The steamer struck the
19 Champion on our starboard bow, about the 'night-heads, and ripped her open forward, carrying the bowsprit right around. My sails then *g*ibed over on the starboard side, and the main boom struck the side of the steamer. The steamer still going on until the main boom got to one of the steamer's davits, and then glanced into the chain plate, and broke the main boom in three pieces, leaving the end of the boom sticking in the steamer, between her chain-plates and the steamship, wedging the chain-plate off. The steamer went on about three hundred yards down the bay from me. I then hailed her and told her to come back, that I was in a sinking condition. She came back, and within fifteen yards to on my starboard side and threw me lines, one of which I made fast forward and the other aft. Then when I was lashed fast to the steamer, her captain and mate came on board my vessel, bringing his lantern forward where I was. The captain asked what damage was done? I replied to him, "That there was no use then in talking about damage; that he had better cast off from me at once, or we would all go down together." Then I took

20 my books and a small bundle of clothes, and went on board the steamer, where I found my mate, he having already boarded her, leaving the captain of the steamer, his mate, and one of my crew, and the passenger that was with me on board the schooner. They staid aboard of her until she sunk with them, which was directly after I boarded the steamer. Three lives were lost—one of my crew, the passenger, and the mate of the steamer—and the captain of the steamer came very near being lost. From the time I saw the steamer until the collision the course of the Champion was not changed. The bow of the steamer—I mean her stem—struck my vessel. The Champion was owned by Washington Respass, Thomas Turner, William H. Respass, and Major Evans, owning one-fourth part each, and they all reside in the State of Virginia. At the time of the collision the schooner I think, was worth twenty-eight hundred dollars. I paid for a fourth of her four hundred and fifty dollars; but being under age, I got my uncle, Wm H. Respass, to hold my interest. I cannot say what expenses were put on her after her purchase, but I suppose it was from
21 three hundred and fifty to four hundred dollars.

The cargo belonged to Washington Respass and myself—one-half to each. The schooner was in pretty good order when she was struck. She was pretty tight and strong, although she leaked a little. Her cargo consisted of nine hundred bushels of oysters, and they were engaged for seventy-two and a half cents per bushel. The schooner and oysters were a total loss. The oysters would not live confined in the schooner and sunk more than ten or twelve days, and the schooner could not be raised. The collision took place about five or six miles from Cove Point—the point bearing about s'west—in between six and seven fathoms of water, and occurred about one o'clock at night. Our vessel had the mainsail, foresail, & jib set. Our vessel was about thirty-one tons, I think, but the papers were sunk. We had, in addition to the other lights above mentioned, one in the binnacle where the compass was, which is in the stern. The light and compass sit on the after part of the trunk. The light is only intended to see the compass by. Our compass was in good order. There was nothing the matter with it that I know of. We had it repaired the trip before.
22 The binnacle usually sits in vessels day and night, on the after part of the trunk.

James Respass, colored, was the name of the passenger lost. He was a married man, I think. I think he was generally reputed to be a married man. He lived with a woman named Nancy Respass. He was considered to be married. I think he had four or five children, if I am not mistaken. The children were small. None of them were large enough to work for themselves. I don't suppose the eldest was over ten or twelve years old. I think he was a sober, industrious man. I never knew him to be drunk. Nancy Respass and his children, I don't think, had any other means of support but his labor, because the people where she lived helped her some. Some gave her corn & some clothes.

Cross-examined:

I have known James Respass from eight to nine years. I am now in my twentieth year. I have lived in the neighborhood of James Respass these eight or nine years. I recollect him living with
23 Nancy Respass six years. How much longer he lived with her I do not know. I know nothing about their marriage, except what I have stated. The cook, Hudgins, was in the cabin on the night

of the collision, when I first saw the steamer. He remained there until a few minutes before the steamer ran into us. When I first saw the steamer she was about half a mile off. The light in the binnacle was white. It was a small globe-light. It does not show its light in front, but aft. When I first saw the steamer I think I saw both her red and green lights, and the white light. I think I may be mistaken in this. I kept looking first at the steamer and then at my compass to see that my vessel did not get off her course, until the steamer got to us. Powell remained at the bow until just as the steamer was about to strike. After the collision we were by the side of the steamer a quarter of an hour—it might have been less—before our vessel sunk. James Respass was standing, both before & about the time *the time* the collision took place, amidships. After the collision I did not pay much attention to him; but he went into the cabin the same
24 time I did after his clothes, and I think he came out behind me. When he went *went* into the cabin we were then by the side of the steamer. I suppose we had been there something less than a quarter of an hour. This was after I told the captain that there was no use talking about damages, that he had better cast off or that we would all go down together. I got on board the steamer after I came out of the cabin, and told Respass to follow after me. I don't think I ever saw him again, because I had just stepped on the steamer when our vessel broke the steamer's lines and sunk. If we had both started when we started to go in the cabin to go on the steamer I suppose we would have got on the steamer safely.

Redirect:

After the collision I saw where the steamer struck us. The effect was to rip us right open fore and aft. I mean by fore and aft that the direction of the rip was from forwards towards aft, and not crosswise.

(Signed) NOAH T. STERLING.

25 John B. Powell's deposition of November 8th, 1869 is already in the record.

Deposition of William H. Hudgins.

MATHEWS COUNTY, *State of Va:*

Personally appeared before me, W'm J. Winder, a justice of the peace in and for the county and State above written, W'm H. Hudgins, who, being duly sworn according to law, declared that he was personally and well acquainted with James Respass and Nancy his wife; he knows that they lived together as man & wife, and were reputed as such, and that they have now five small children. He derives his information from the fact that he knows that James Winder was born the property of Fielding Winder; Nancy Gwyn, his wife, was born the property of Rob't G. Hunley, about the year 1842, and purchased by said W'm H. Hudgins on or about the year 1852; and that said James Respass asked for and obtained my consent to have Nancy Gwyn for a wife. The marriage ceremony was read to them, and I considered
26 them legally married according to the laws and customs regulating the marriage of slaves, since confirmed by the legislature of Va. I further know that Nancy Respass is the person she represents herself to be, that is, the widow of Jas. Respass, deceased, and now has five children living, namely: Jno., born Sept. 27, 1860; Armstead, Octo. 19, 1862; James, 1864; Arthur, born in 1866; and Georgianna in 1868.

I kept a record of the three first; the other two born since emancipation.

(Signed) W'M H. HUDGINS.

Personally appeared before me, W'm J. Winder, a justice of the peace in and for the county and State above written, W'm H. Hudgins, and made oath to the above statement.

Given under my hand and seal this 15th May, 1869.

(Signed) W'M J. WINDER, *J. P.* [SEAL.]

Deposition of Lucretia Dixon.

MATTHEWS COUNTY, *State of Virginia:*

Personally appeared before me, W'm J. Winder, a justice of the peace, in and for the county and State above written, Miss Lucretia
27 Dixon, who declared that she was personally and well acquainted with James Respass; knows he was born the property of Fielding Winder July 11, 1842, from the fact of my having entered his age in the family record; and, further, he claimed Nancy Gwyn to be his wife. I know they lived together as man and wife, were reputed to be such, and now have five children.

(Signed) LUCRETIA DIXON.

Personally appeared before me, W'm J. Winder, a justice of the peace, in and for the county and State above written, Miss Lucretia Dixon, and made oath to the above statement.

Given under my hand and seal this 15th May, 1869.

(Signed) W'M J. WINDER, *J. P.* [SEAL.]

STATE OF VIRGINIA, *Matthews County, to wit:*

I, John C. Kirwan, clerk of the county court of Matthews County, in the State aforesaid, do hereby certify that W'm J. Winder, whose certificate is hereto annexed, *is hereto annexed*, is senior justice of the said county of Matthews, in the State of Virginia, duly commissioned and qualified to the said office, according to the constitution and laws of this State.

Given under my hand and the seal of my office this 17th day of May, 1869.

[SEAL.] (Signed) JNO. E. KIRWAN, *Clerk.*

(Indorsed:) Steamer Lucille vs. Nancy Respass et al. Depositions of Geo. Burrill, Edw'd Conway, John B. Powell, Noah T. Sterling, W'm H. Hudgkins, Lucretia Dixon.

D. W. MIDDLETON, Esq'r.,

Clerk of Supreme Court of U. States.

File this agreement to amend the record in this case.

W. S. BRYAN,
Proctor for Appellees.

Supreme Court of the United States.

STEAMER LUCILLE

vs.

NANCY RESPASS, ET ALS.

No. 218.

MOTION TO DISMISS THE APPEAL.

Nancy Respass for herself and children filed a libel in Admiralty in the District Court of the United States for Maryland.

She alleged that they had sustained damage to the amount of two thousand dollars.

The District Court passed a decree for twenty-one hundred dollars.

The Libellants objected to a decree for more than they claimed. But the Respondents contended that the amount should be fixed at twenty-one hundred dollars. Thereupon the Libellants filed a paper remitting one hundred dollars of the amount, so as to reduce the sum due to two thousand dollars. (Marginal page 21, Record.)

Both parties appealed, and the Circuit Court affirmed the decree. Respondents appealed to this Court. Motion to dismiss the appeal for want of jurisdiction.

POINTS.

The Libellants below never claimed more than two thousand dollars. When the District Court on the appli-

Supreme Court of the United States.

STEAMER LUCILLE

ATS.

NANCY RESPASS, ET ALS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MARYLAND DISTRICT—IN ADMIRALTY.

APPELLANT'S BRIEF AND POINTS IN ANSWER TO THE MOTION TO DISMISS THE APPEAL.

Nancy Respass, claiming to be the wife of James Respass, deceased, and the mother of Armstead, James and Georgianna Respass, children of James Respass, filed a libel *in rem.* in the District Court of the United States for Maryland, against the Steamer Lucille. She alleged that the Lucille had collided with the Schooner Champion; that owing to the rapid sinking of the Champion, James Respass, her husband, was drowned; that he was the sole support of the Libellant and of the said children, and that by his death she and they had been damaged to the extent of two thousand dollars. The Libel concludes with a prayer, that "the Court will pronounce for the Libellants' aforesaid demand, and for such other and further relief and redress as to right and justice appertain, and as the Court is competent to give in the premises."

The Respondents made answer, leaving all allegations of fact to be proven, denying the fault of the collision to rest upon the Lucille, and raising three questions as to jurisdiction and form of procedure.

1st. By denying the jurisdiction altogether as the matters and things set up in the Libel "are not of admiralty jurisdiction."

2d. By asserting that if the matters are of admiralty jurisdiction the relief should have been asked in the name of the State of Maryland. And

3d. That if the Libellant is entitled to relief in admiralty, "it would be not *in rem.* but in *personam.*"

The District Court passed a decree in favor of the Libellant for twenty-one hundred dollars.

The Libellant objected to this decree, on the ground that it was for more than the sum named in the *ad damnum* article of her Libel, and filed a paper purporting to be a *remittitur* to the extent of one hundred dollars, at the same time entering a prayer for leave to appeal to the Circuit Court. The Respondents also appealed, and the Circuit Court having affirmed the decree of the lower Court, their appeal has been prosecuted to this Court. And the motion is now made to dismiss this appeal from the Circuit Court for want of jurisdiction, on the ground "that the matter in dispute did not exceed two thousand dollars."

POINTS.

It is true the Libellants claimed no more than two thousand dollars, in the *ad damnum* article of the Libel, but they united with it a prayer for general relief, and under the prayer for relief the Court may decree a larger sum than the precise amount named.

Pratt *vs.* Thomas, Ware, 427.

Provided that sum is not inconsistent with the prayer.

4 W. C. C. 54.

2. A Court of Admiralty is a Court of Equity acting on marine affairs. As such it has complete control over the

form and substance of the decree, and moulds it to suit the exigencies of each case. It is not bound by the amount of damages claimed in the Libel. Sir William Scott, in a case of salvage, when the libellant propounded for £800, gave £2,100, notwithstanding objection was made; "the whole matter, says he, is before the Court; and I think the Court is by no means limited by any particular demand."

8 Jurist, 501.
Ware, 434.
5 Rob. 322.

3. The Libellant objected to the amount of the Decree of the District Court, but that was manifestly done to prevent, if possible, an appeal beyond the Circuit Court. Although uninjured by the decree, and obtaining, in fact, more than she claimed, she took an appeal to the Circuit Court, (Rec. p. 9,) notwithstanding the filing of the paper by way of *remittitur*. But the decree of the District Court having been affirmed, no remittitur was then entered, and the Appeal to this Court *is from the decree* of the Circuit Court. Nor is there anything in the Record to show that it was passed in either Court at the request of the Proctors for the Respondents.

4. The amount of the Decree determines the right of appeal.

The decree was for $2,100.

In Gordon *et al. vs.* Ogden, Mr. Chief Justice Marshall, in delivering the opinion of the Court, said, "This Court has jurisdiction over final judgments and decrees of the Circuit Court, when the matter in dispute exceeds the sum or value of two thousand dollars. The jurisdiction of the Court has been supposed to depend on the sum or value of the matter in dispute in this Court, not on that which was in dispute in the Circuit Court. If the writ of error be brought by the Plaintiff below, then the sum which his declaration shows to be due may still be recovered; and consequently the whole sum claimed is still in dispute.

decree will lie to this Court." And in concluding the opinion, after reciting that the Respondents elected to set-off a balance due them for freight, which reduced the amount of the decree to $1,071.27, and that a final decree was entered for that amount, the Chief Justice goes on to say, "This was the final decree of the Court, and the one from which the appeal is taken, and as it is below $2,000, no appeal will lie."

And as the appeal in this case was from a final decree for more than $2,000, it is respectfully insisted that it comes within the jurisdiction of this Court.

R. STOCKETT MATHEWS,

For Appellants.